

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ANDREA D. PYLANT
Plaintiff,

VS.

**1. HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY, and**

**2. THE FIRST AMERICAN
CORPORATION GROUP LIFE,
MEDICAL, DENTAL, DISABILITY
BENEFITS TRUST NO. 502
Defendants.**

Civil Action No. 3:05-CV-0379-G

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL

Plaintiff, Andrea D. Pylant, asks the court to grant a new trial as authorized by Federal Rule of Civil Procedure 59.

A. Introduction

1. Plaintiff is Andrea D. Pylant; and defendants are Hartford Life and Accident Insurance Company and The First American Corporation Group Life, Medical, Dental, Disability Benefits Trust No. 502.

2. Plaintiff sued defendant for the denial of long term disability benefits.

3. After considering the cross-motions for summary judgment, the Court rendered a judgment in favor of Defendants, and the clerk entered the judgment on April 20, 2006.

B. Manifest Error of Law

4. The Court should grant a new trial because the Court committed a manifest error of law. *Brown v. Wright*, 588 F.2d 708, 710 (9th Cir. 1978). Plaintiff filed her Motion for Summary

Judgment on October 28, 2005. On January 20, 2006, the Magistrate Judge issued his Memorandum Order granting in part and denying in part Plaintiff's Motion to Compel answers to interrogatories and document requests and for other relief. Plaintiff filed her Objection to Magistrate Judge's Order on January 27, 2006. This Court issued its Memorandum Opinion and Order granting Defendants' Motion for Summary Judgment on April 20, 2006. However, based on the review of the record, it does not appear that the Court ruled on Plaintiff's Objection to Magistrate Judge's Order filed on January 27, 2006.

5. The two discovery issues addressed in Plaintiff's Objection to Magistrate Judge's Order relate to the conflict of interest of the Defendants and whether the Defendants had in place safeguards and procedures to ensure consistency of interpretation. The Court, in its Memorandum Opinion and Order (at 15) commented that both sides were without conclusive evidence regarding the consistent interpretation of the plan. The Court also commented that there was no other evidence of a conflict presented by Plaintiff. *Id.* at 18. Based on the Court's comments, Plaintiff respectfully submits that the evidence sought through discovery as related in Plaintiff's Objection to Magistrate Judge's Order is relevant and material to these two issues and the Court's decision.

6. Rule 59 provides:

. . . On a motion for new trial in an action tried without a jury, the Court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

Fed. R. Civ. P. 59(a)

C. Conclusion

7. Plaintiff respectfully requests that this Court grant Plaintiff a new trial, or open the judgment

and rule on Plaintiff's Objection to Magistrate Judge's Order, and if appropriate at that time take additional testimony prior to entry of a new judgment or closing the present judgment.

WHEREFORE PREMISES CONSIDERED, Plaintiff respectfully requests that the Court provide Plaintiff with the relief sought herein.

Respectfully submitted,

/s/ Bernard A. Guerrini

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2006, I electronically filed the forgoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means: Jessica Spangler-Taylor, Akin, Gump, Strauss, Hauer & Feld, L.L.P., 300 Convent Street, Suite 1500, San Antonio, Texas 78205.

/s/ Bernard A. Guerrini

Bernard A. Guerrini